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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/970,045	11/13/1997	EUGEN KOREN	20487/113	2118

7590 02/06/2003

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EXAMINER

DUFFY, PATRICIA ANN

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 02/06/2003

31

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory ActionApplication No.
08/970,045Applicant(s)
Koren et alExaminer
Patricia A. DuffyArt Unit
1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jan 2, 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires three months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: The amendment of claim 12 is broadening in that a ratio is no longer claimed. Further, while example 10 supports a ratio for relative staining intensities (i.e. a ratio) no specific concentration was measured or contemplated and as such, the amendment raises the issue of new matter. Further, the correlation is not new.

3. ☒ Applicant's reply has overcome the following rejection(s):
Had the amendment been entered, the rejection of claims 44 and 45 would have been obviated.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Applicants amendment to claims 12 and 13 is not seen to obviate this rejection. Ex. 10 drawn to relative ratio and Ex. 10 drawn to relative ratio of intensities not concentrations as claimed. Applicants amendment to claim 40 does not obviate the rejection of claim 40, which was drawn to step B.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1-11, 39, 41-43, 46, and 47

Claim(s) objected to: _____

Claim(s) rejected: 12, 13, 40, 44, and 45

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ *Pat A. Duffy*
10. ☐ Other:

PATRICIA A. DUFFY
PRIMARY EXAMINER
ART UNIT 1645